



## **MINUTES OF THE LAND RECLAMATION COMMISSION MEETING**

July 28, 2005

Vice-Chairman Hugh Jenkins called the meeting to order at 10:00 a.m., at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

**Commissioners Present:** Jim DiPardo; Hugh Jenkins; Dr. Gregory Haddock; Nick Matherly; Bob Ziehmer; Mimi Garstang; and Ed Galbraith

**Staff Present:** Larry Coen; Tom Cabanas; Bill Zeaman; Steve Femmer; Andy Reed; Clint Bishop; Mike Mueller; Mike Larsen; Tonie Hill; and Teri Bibbs

**Others Present:** Rich AuBuchon, Attorney General's Office; Stephen Preston, OSM, Omer Roberts, EAO, MDNR; Dan Upp and James Robbs, Associated Electric Coop., Inc.; Ryan Sutherland, Ash Grove Agg. and David Shorr, Attorney at Law; Ed Robinson, Joe Guillian, Corey Robinson, Enos Criddle, and Kim R. Moore, SEMCO; Robert Harting; Wendy Dressler; Lori Stanek; John Runk and Greg Herkert, Attorney at Law

### **1. MINUTES OF THE MAY 26, 2005, AND JUNE 9, 2005, MEETINGS**

Dr. Haddock made the motion to approve the Minutes as written. Mr. DiPardo seconded; motion carried unanimously.

### **2. ABANDONED MINE LAND ACTIVITIES**

**AML Status Report** Mr. Bishop informed the Commission that in future meetings this report will be given in two-part. Mr. Bishop will be giving the Abandoned Mine Land Report and Mr. Larsen will be giving the Bond Forfeiture Project Status Report. Mr. Bishop stated that since the last meeting we have completed construction of the Miller's Creek project, a 30 acre mine spoil project located near Millersburg in Callaway County. The final project cost was \$504,580.00 and was successfully completed in May 2005.

Mr. Bishop stated that the Stott City lead mine shafts in the Lawrence County project was bid out to Ron Reed Dozing of Sheldon, Missouri. Both shafts have been permanently sealed and the project is complete. The final project cost was \$19,285.00.

Since the last meeting the LRP has been informed of a couple of mine shafts in Newton County in the Neosho area. The successful bidder on this project was Freddie Vans of Pittsburgh, Kansas. The shafts were successfully sealed and the final project cost was \$15,750.00.

There are no new AML projects at this time in the planning and design stage. However, due to a change in our AML funding situation, the LRP will begin immediately prioritizing the AML inventory for upcoming projects. The LRP is hopeful to report major reclamation accomplishments during the next construction season.

In regard to Reidel Energy Inc., Mr. Bishop stated the State of New York had taken over the business dealings with the Surety and had reached a settlement agreement to do the work. However the Department of Insurance in the State of New York decided to cash out of the obligation. The reclamation at this site will remain on hold until such time the money changes hands.

### 3. PERMIT ISSUES

#### **Hearing Request – Ash Grove Aggregates, New Mine Site Proposal**

Mr. Zeaman stated that on April 15, 2005, the Program received a permit application from Ash Grove Aggregates, Inc. proposing to mine limestone on 300 acres in Polk County. After the application was deemed complete the company published a public notice once a week beginning on May 11, 2005, for four consecutive weeks in the *Bolivar Herald Free Press*. The company also sent by certified mail a notice of intent to operate a surface mine to the appropriate government officials and adjacent landowners. This proposed permit application of a 300-acre limestone mining operation is located near Bolivar. The proposed mine operation time frame is to the year 2045. The Staff Director received nine letters concerning the proposed Ash Grove Aggregates permit application for the Kifer Quarry mine site. Two of the letters provided comments only and five of the letters requested that a public meeting and hearing be held to further discuss the permit application. One letter requested a hearing only.

The letter from the law firm representing the Chambers requesting a hearing was received after the closing date of the public comment period. However, the Staff Director did consider their comments. The LRP did contact Ash Grove Aggregates, Inc. by mail and asked if the company would entertain a public meeting in accordance with The Land Reclamation Act. The LRP received a letter on June 27, 2005, from Ash Grove Aggregates, Inc. stating they respectfully decline to hold such a public meeting. The company feels that a public meeting will not resolve the concerns of the neighbors. However, the company will conduct individual meetings with each concerned resident in an attempt to alleviate their concerns.

Consequently Ash Grove Aggregates, Inc. formerly and respectfully waives the right to hold a public meeting in accordance with The Land Reclamation Act. Therefore, we present a request for a hearing before the Commission.

Mr. Zeaman stated The Land Reclamation Act addresses the issues of mining and the environment, public notification requirements, effects on quality of life and a request for a public meeting and or hearing. The Department of Natural Resources does regulate water and air pollution. There is no enforcement power concerning the AgNPS SALT Project. The Department does not provide protection concerning blasting related issues, numbers of quarries in the area, travel way safety issues or noise pollution. The LRP cannot simply deny a permit based on a request. On June 24, 2005, the Staff Director did inform all parties requesting a hearing of the time, location and how to prepare for today's meeting.

The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of a permit application. In addition The Act requires that the Staff Director consider any written comments when making the notice of recommendation. After consideration of comments provided in letters, it is the Director's recommendation to issue the permit application involving 300 acres in Polk County to Ash Grove Aggregates, Inc. The Staff Director did recommend approval of the pending mining application permit because the company did satisfy all requirements of the Land Reclamation Act.

Ms. Wendy Dressler, a property owner in the area, stated that her family moved to Polk County about four years ago after she experienced two nervous breakdowns and was hospitalized due to stress. The family wanted, for Ms. Dressler's health needs, to be away from the noise, traffic, and stresses of "big city" life they had previously experienced in New Jersey. Ms. Dressler stated that the stresses were contributing to her two nervous breakdown experiences. Ms. Dressler has a disease that came on when she was 31 years old called A Typical Psychosis, which is a stress-related illness. She has taken medicine for the past eight years to help with the disease but it does not always work. She stated that she had her second breakdown when she was 33 years old. Since then Ms. Dressler has stabilized on her medication and is able to do most things that are not too stressful to her. Ms. Dressler is a stay at home mother and does volunteer work for her son's school and their church. She stated that it is the opinion of her doctor and herself that if a quarry came into the area it would be terrible for her health. In addition Ms. Dressler stated that not only will the noise effect her but she would constantly be worried about the financial stress of her foundation cracking, windows breaking, their well collapsing in addition to other concerns. Ms. Dressler stated that she currently feels stable and has asked that consideration be given to protect the progress she has made since moving to the area in question. In addition, Ms. Dressler asked that the Commission consider denying the permit request.

Mr. Robert Harting, a property owner in the area, stated that he was presenting a letter to the Commission on behalf of Rex Barham who is an adjacent land owner on the West border of the proposed mine site. Mr. Harting shared with the Commission pictures of the T&M Stone Co. showing the plumes of dust from the site. T&M Stone Co. is just 1 ¼ miles to the West from the proposed mine site. He stated that the dust has been spreading onto neighboring property for years. The photos also included 15 test holes that were drilled on the site located on the banks of Bear Creek right below the tree line. A view of Mr. Barham's property was included and Mr. Harting indicated that Mr. Barham was not notified by certified mail as were the other property owners.

Mr. Harting provided the Commission with a listing of Missouri endangered species. Currently there are only 17 animals that are endangered in Missouri and the Niangua Darter is one of them. According to Mr. Harting, the Niangua Darter's range is only found in the Osage River drainage basin. Mr. Harting also stated that the Niangua Darter was found in Bear Creek and a team from the Missouri Department of Conservation sampled the stream above and below the proposed mine site, however, the data is not available at this time. Mr. Harting informed the Commission that he is a science teacher and did research at the University of Missouri at Rolla. His main concern is that under an open system condition when calcium carbonate is exposed to the exchange of atmospheric CO<sub>2</sub> the calcium ion concentration rises from a few parts per million to 400 parts per million. He added that under normal conditions, in a closed system, groundwater calcium ion concentration never rises more than a few parts per million in that closed system. However, when you get rainwater on top of crushed limestone it is washed into Bear Creek where the federally endangered Niangua Darter range is downstream, the outcome will be surges of "unbelievable alkalinity". Mr. Harting stated that we have not been able to measure the levels due to there not being a mine site on the banks of a creek.

Mr. Harting continued to state that on HWY 13 near where it meets HWY 54 the Highway Department had to move their highway in order to keep away from the range of the Niangua Darter in that section. He added that a lot of Dolomite is also mined in this area which contains Magnesium and acts as a stabilizer for the rainwater so that the pH would not rise very much.

Mr. Harting spoke of the Burlington Limestone formation, running along the Reed Spring fault, which runs Northwest/Southeast, for many miles. From this point on, down south of Springfield is all Burlington Limestone. It is his opinion that there is plenty of Burlington Limestone available for mining in this area.

Mr. Harting's closing comments were related to the meeting that the DNR had in Bolivar, Missouri. He stated that a Ms. Perry with the DNR presented the results of a biological assessment study on Piper Creek. This study will focus on helping local people develop workable solutions that will protect the Piper Creek water shed and improve the quality of life for everyone living in it. Mr. Harting further questions why the DNR didn't have a meeting like this with regard to the Niangua

Darter downstream. It is his opinion that further research is necessary involving other organizations such as the Missouri Department of Conservation in conjunction with the DNR to protect the endangered species.

Ms. Lori Stanek, a property owner in the area, stated that her husband has farmed within a two-mile radius of this proposed site since he got out of the Vietnam War. She added that her and her husband are not militant against progress and change. When they moved to this location 21 years ago, the subdivision that is currently behind their property was not there. She added that she can work in her garden and watch T & M Stone blast every single day. She stated that she is not happy about it, however, it is a fact of life. It is her opinion that for the Commission to say that the human element is probably the most distasteful to listen to is a little offensive. Ms. Stanek feels strongly that this presence does effect their quality of life. Everytime T & M blasts her dogs run. She added that they have a 240-acre farm and the blasts also effect their cattle. The constant traffic is a further concern of Ms. Stanek's. She feels that it is a matter of safety. As a Government committee, she feels that the Commission is obligated to at least consider the element of safety for the people living in this rural community. It concerns her that there is an existing quarry within a little over a mile of the proposed quarry that is going to be at least three times as big. She added that the area in question is rural with grain, livestock, and elderly people on the roadways. She stated that this is the human element, the one that matters the most.

Mr. David Shorr, an attorney with Lathrop & Gage whom is representing Ash Grove Aggregates, Inc., stated that Ash Grove has worked with the Commission and the Land Reclamation Program before. Ash Grove operates 13 mines in the state of Missouri and five in the state of Kansas. The company is very proud of their environmental compliance record having previously approved reclamation here in the State of Missouri from this Commission and a continued strong track record with other programs within this department. Ash Grove is pleased that the Director of the Land Reclamation Program concurs with our application and designs for a proposed new mine in the Bolivar area meets the requirements of Missouri law. As such he recommends approval of Ash Grove's application. Mr. Shorr added that Ash Grove presently operates a limestone quarry in Bolivar. The demand for stone in this area continues to grow and has been addressed before the Commission before by other contractors. Bolivar, Missouri has been a very productive business location for Ash Grove. Mr. Shorr stated that the reserves in the existing Bolivar mine will soon be exhausted and the company will soon be entering the reclamation phase working with the Land Reclamation Program to close that mine out.

Mr. Shorr added that in order to maintain the company's production and supply, the new mine is necessary and as with any business, Ash Grove is trying to plan ahead to ensure they can remain in business. The present proposed site has attributes worthy of the company's investment. He stated there is a landowner interest in extracting what is legally and rightfully required sub-surface mining rights. Mr. Kifer has offered an appropriate space for Ash Grove to lease. Mr.

Shorr pointed out that one of the attractive items of Mr. Kifer's project is the fact that there is additional available land that lends to the buffer character of this proposal. In addition the geological structure at this location is highly suitable. There is limited overburden in the quality of rock for the purposes for which we provide our contractor clients is exceptional. As stated by Mr. Shorr earlier, there is a reasonable buffer on the Kifer held properties with low population densities within the immediate area. He added that Ash Grove was able to retain their existing work force within the Bolivar area. With this said, Mr. Shorr stated having met the requirements of law, Ash Grove supports the acceptance of the Director's position.

Mr. Shorr pointed out that the issue before the Commission today is whether to grant a hearing made on the request of commentors during a specific comment period. It is the company's stance that the results of the Commission approving a hearing today will delay Ash Grove's ability to proceed legal approval to mine as indicated by the Staff Director. Ash Grove contends that the commentors have not met their required burden under law to require a hearing. Mr. Shorr added that the General Assembly evaluated requirements for hearings as recently as 2001. At that time they modified section 444.773.3 and set forth a burden that a petitioner for a hearing must meet. That burden expressed in statute is a demonstration that petitioner's health, safety, and livelihood will be unduly impaired by the issuance of the permit. He further stated that Ash Grove contends that the commentors have not demonstrated the requisite unduly impaired as a matter of law. Mr. Shorr stated that there is no case law in the revised 2001 amendments and felt that our counselor will advise us as such.

In conclusion, Ash Grove believes that the basic tests for establishing a right to hearing have not been met. The application has met all applicable and required laws. Ash Grove respectfully requests the Commission to deny the request for a hearing.

Mr. Jenkins asked Mr. Shorr how he would address Mr. Barham's assertion that he did not receive notice as an adjacent or contiguous landowner?

Mr. Shorr replied that Ash Grove has not received anything on that matter. The company feels that they have notified everyone that claims to be in the public record and consistent with the Polk County record.

Mr. Jenkins asked Mr. Shorr if they were unsure if Mr. Barham's ownership shows on record?

Mr. Shorr again stated that the company notified all parties showing ownership as a matter of public record.

Mr. Harting stated that the company sent the certified letter to the previous owner.

Mr. Ryan Sutherland, General Manager of Ash Grove Aggregates stated that the 2001 Polk County plat book is where the information was retrieved. He further indicated that it shows a Mr. Wendell Fisher as the property owner, not Mr. Barham.

Mr. Harting stated that was correct, however, Mr. Fisher was the property owner in 2001.

Mr. Jenkins asked Mr. Shorr, in the event that Mr. Barham has purchased this property, do you believe you may have some problem with your notice requirement?

Mr. Shorr stated that he has not seen any of the material.

Mr. Jenkins asked Mr. Shorr if the company was going to submit their application as is without regard to Mr. Barham's comments?

Mr. Shorr stated the Commission had received Mr. Barham's comments. The purpose of the statute is to provide the opportunity for a party to comment.

Dr. Haddock asked if typically, the notifications were sent by certified mail?

Mr. Shorr stated yes.

Mr. Haddock asked what the process is if the letter does not come back received?

Mr. Shorr stated the problem he has responding to Mr. Haddock's question, is that they were not aware of Mr. Barham until this was presented today.

Mr. Haddock asked were the mines mentioned earlier by Ms. Stanek being in a mess, Ash Grove mines?

Mr. Sutherland stated that they do have a quarry North of Bolivar, however, he does not consider it a "mess".

Mr. Shorr stated that since their integrity is in question, he would like to submit into record as part of his testimony, letters from two adjacent property owners to the Bolivar mine. These letters will indicate that Ash Grove has been "good neighbors" in terms of their operation.

Mr. Jenkins asked Mr. Zeaman if he was aware of Mr. Barham's allegation and at what point did we receive his information that he did not receive notice of the permit request?

Mr. Zeaman stated that today was the first time that he has been made aware of that. What the LRP does have is a letter addressed to Mr. Wendell Fisher.

Mr. Jenkins asked if Mr. Zeaman has comment with regard to that? If Mr. Barham did not receive notice, will it make any difference to him in the recommendation?

Mr. Zeaman stated that the public notification requirements require that an individual be sent certified mail. All the LRP needs is the receipt in fact that certified mail was indeed sent to the appropriate registered landowner. In this case Mr. Zeaman refrained from making a judgement, however, stated if there is record on file in Polk County that Mr. Barham is in fact the registered landowner, then it is his opinion that is a serious consideration that the LRP will have to address.

Mr. Coen stated that all the LRP received from Mr. Barham was a letter stating that he did not receive a certified letter. Mr. Coen stated that the letter didn't really address his concerns regarding the permit.

Mr. Ed Galbraith asked if the LRP had received any other correspondence from Mr. Barham other than the letter presented today?

Mr. Zeaman stated that there was nothing that he was aware of at this point.

Mr. Jenkins asked Mr. Coen if he cared to comment in respect to his recommendation?

Mr. Coen stated that the only thing the LRP can require the company to do is to notify everyone on record. If they are not on record and they change hands, he doesn't know personally what he himself would have done differently.

Mr. Jenkins stated that he was under the impression that Mr. Barham purchased the property recently enough that it wasn't on the plat book.

Mr. Hastings commented that the plat book is usually about two years out of date when it is issued.

Mr. Jenkins stated that was just a convenient ad for people who want to look at it. By a legal standard it is Mr. Jenkins opinion that one might look at the recorder of deeds office. He asked Mr. Coen if he feels that the company has complied with what is normally required for a permit application.

Mr. Coen responded that he doesn't know if the company has complied or not. If the company did not go to the courthouse and look at the legal landowners then they may not have complied.

Mr. Jenkins asked Mr. Shorr if he was understanding correctly that the decision was based on the plat book and that Mr. Barham's purchase was recent enough that it hadn't been updated?



Mr. Shorr stated that was correct.

Mr. Haddock stated that in general the assessor's office is a better place to check.

Mr. Jenkins asked if there had been a similar issue in the past where the Commission delayed the issuance of the permit.

Mr. Coen stated that was correct. If the Commission was made aware of a notification that didn't occur in the past, the Commission simply directed that the notification should occur and give the individual the same amount of time to comment. The issue would then be addressed at the next scheduled meeting.

Mr. Jenkins stated that since the Commission has handled a similar issue this way in the past, he is inclined to do that in this case. He added that there is some thought to be had that if the company didn't bother to check the courthouse records and they just go ahead and act and the Commission is not going to hold them to that, then the Commission has done away with the notice requirements. Furthermore, Mr. Jenkins asked if the Commission does not base their decision on the requirement to notify people, then what incentive does the company have to notify people.

Mr. Bob Ziehmer stated that he did visit with staff from the region regarding the Niangua Darter. The staff had looked at the stream and Niangua Darters, in the past, have been observed 5-6 miles downstream. The report is that the regional staff will continue to work with the DNR, water quality program as permits are issued there. As far as the Land Reclamation permit that is in question, based on the habitat that is on site, and the extreme headwater location, the staff feel that the Niangua Darter is not an issue.

Ms. Garstang asked where Ms. Dressler's property is located?

Ms. Dressler stated that her father gave them five acres in the middle of his land. She is approximately 1/3 of a mile from the actual site.

Mr. DiPardo made the motion to table the request for a hearing until the next Commission meeting on September 22, 2005. Mr. Galbraith seconded; motion carried unanimously.

**Colonial Limestone, Inc., Permit Expansion, Follow Up for Tabled Hearing Request** Mr. Zeaman stated that at the last Commission meeting there was a decision to table a request for a hearing concerning Colonial Limestone. The Delameters concern was that out of a 40 acre expansion area, they did not want the lower 20 acres permitted to Colonial Limestone. Since the last meeting, the LRP did receive a revised mine plan and map indicating that Colonial Limestone will not conduct mining operations any further South of the 20 acres in concern by the Delameters. The LRP did inform the Delameters of the revised mine plan area and also sent them a copy of the map. On July 7, 2005, the LRP did receive

a copy of the letter by fax from the Delameters. The Delameters letter stated that they had received a copy of the revised map submitted by Colonial Limestone regarding their permit expansion application. With removal of the lower 20 acres of the expansion area, they no longer wish to pursue a request for a hearing.

Mr. Zeaman added that because there is no longer a request for a hearing the LRP staff would like the Commission to make a decision on the issuance of the permit application to Colonial Limestone. Mr. Zeaman stated that Mr. Reed previously conducted a site inspection at Colonial Limestone. Mr. Reed indicated to the Commission that he was at the site on July 13, 2005, to do a follow-up inspection. It was apparent that no activity had occurred in the lower 20 acres since the last Commission meeting.

Dr. Haddock made the motion to untable the decision for a hearing request. Ms. Garstang seconded; motion carried unanimously.

Dr. Haddock made the motion to deny the hearing request. Mr. DiPardo seconded; motion carried unanimously.

**Hearing Request – Edward J. Robinson, dba Big Cedar Stone Co., New Mine Site** Mr. Zeaman stated on May, 20, 2005 the LRP received a permit application for Edward J. Robinson, dba Big Cedar Stone Co. proposing to mine limestone on 32 acres in Ste. Genevieve County. After the application was deemed complete, the company published a public notice once a week beginning on May 25, 2005 for four consecutive weeks in the *Ste. Genevieve Harold*. The company also sent by certified mail a notice of intent to operate a surface mine to the appropriate government officials and adjacent landowners. The proposed permit application of a 32 acre limestone mining operation is located Southwest of Ste. Genevieve. The proposed mine operation timeframe is to the year 2080. The Staff Director received three letters concerning the proposed Blue River Stone mine site. Two of the letters provided comments only and one letter requested a hearing. Therefore, the staff present a request for a hearing before the Commission.

Mr. Zeaman Stated that The Land Reclamation Act addresses the issues of the right to mine on a property, request for permit information, type of permit, other quarries operated by Mr. Robinson, compliance history, affects on quality of life and a request for a hearing. The Department does not provide protection concerning blasting related issues, number of quarries in the area or travel way safety issues.

On July 1, 2005, the Staff Director did inform the people requesting a hearing of the time, location of and how to prepare for the July 28, 2005 commission meeting. The Land Reclamation Act requires that the Staff director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the Act requires the Director consider any written comments when making the notice of recommendation. After consideration of comments provided in letters, it is the Director's recommendation to issue the permit application

involving 32-acres in Ste. Genevieve County. The Staff Director did recommend approval of the pending mining permit application, because in fact the company has satisfied all requirements of The Land Reclamation Act.

Mr. Greg Herkert, Attorney at Law, representing John and Judy Runk with Ste. Genevieve Farms stated that the Runk's are requesting that the application for Big Cedar be denied for insufficient personal notice to two adjoining landowners and therefore, a formal hearing is requested. In addition, Mr. Herkert stated that if a formal hearing would be granted his clients would like to submit scientific evidence regarding traffic related safety issues.

In regard to notice, Mr. Herkert stated that Ste. Genevieve Farms owns a significant portion of the property on the South side of Route C. Mr. Herkert has been informed by Mr. Runk that from HWY 32 to the Lawrenceton cut off is a distance of about 6.7 miles. Ste. Genevieve Farms owns about a 4.2 mile stretch of that roadway including directly across the site from the West County Quarry as well as across the State route from the proposed site for which an application has been submitted. Mr. Herkert stated that Mr. Runk's address is 8512 State Route C which is well known throughout the community since Mr. Runk's family has lived on the property for years. However, the notice to Mr. Runk was actually addressed to his neighbor R&S Farms at 8510 State Route C. Fortunately, Mr. Runk did get the certified mail eventually, after he returned from a trip from outside of the Country on June 6, 2005.

Mr. Herkert further stated that Michael Wolk was another property owner that claims he did not receive notice of the application. Mr. Wolk is an adjoined property owner as well, and as Mr. Herkert understands it, Mr. Wolk's home is set off of the South side of State Route C and he owns the actual access road which he takes in order to get onto HWY C. Mr. Herkert stated that it is their position as an owner of the road dropping right out onto HWY C, Mr. Wolk is an adjoining property owner and therefore entitled to notice of these proceedings.

Dr. Haddock asked if it was a direct ownership or if it was an easement?

As Mr. Herkert understands it, Mr. Runk actually deeded the property to Mr. Wolk. Therefore, Mr. Wolk has an ownership interest in the road which is a private road.

Mr. Herkert stated that the biggest concern that is presented by his clients is an issue of traffic safety on State Route C. State Route C is a light duty road, with two lanes, no shoulder and is already receiving heavy truck traffic from the existing quarry. As Mr. Herkert understands it, a prison was opened in Bonne Terre approximately 2 years ago which has further exasperated traffic on HWY C. It is their position that the situation that already exists is bad and it is only going to get worse by opening up another quarry on State Route C. exactly adjacent to the existing quarry site. Particularly at the intersection of HWY C and HWY 32. In addition Mr. Herkert stated that Mr. Wolk has collected 130 letters, which he

would like to submit into record, collected from residents who reside in the general area.

Mr. Herkert noted Mr. Zeaman's report that he contacted MoDOT and there will be a flashing signal erected at the intersection of HWY C and HWY 32 by the end of the year. He further noted that in The Land Reclamation Act as it was revised in 2001, in part, the declaration of policy states that the policy is to protect or promote the health, safety and general welfare of the people of this state. Mr. Herkert indicated that the Wolk's, on behalf of Ste. Genevieve Farms, is to have a formal hearing. The Wolk's would like the opportunity through the pretension of the appropriate expert or experts to present the Commission with some scientific evidence that there is a safety issue at State Route C as well as a road that is poorly maintained and is already in a situation that it needs to be upgraded.

Dr. Haddock asked what the relation of Mr. Wolk is to Mr. Anthony and Timmy Wolk in which the original certified mail was sent?

Mr. Runk indicated that Mr. Michael Wolk and Anthony Wolk are cousins.

Mr. DiPardo asked what commodity is being mined at the property?

Mr. Runk indicated that they had a crushed stone operation for approximately the past 7-8 years.

Mr. Joe Guillian, General Manager of SEMCO Stone stated their company is one of the largest distributors of dimensional stone in the United States and in particular in the Midwest. SEMCO brings in greater than 20 Million dollars in sales per year. Their company staff is comprised of greater than 125 employees. Mr. Guillian stated that the company has grown significantly within the last seven years and tripled in the last three years in sales. He indicated that there is a huge demand for landscape and building stone out of their available Missouri resources. The company is currently operating two full time quarry operations. One in the name of Big Cedar and the other being West County Quarry.

Mr. Guillian stated that because of their expansion they have plans to open a new facility in Kansas City just for distribution reasons beginning the first part of 2006. Mr. Guillian indicated that they had a strong need for material. SEMCO has a 60-acre yard holding about a 600,000 ton of landscape and building stone. The company is now up to 18 semi-trucks and they deliver stone to their customers in 23 states six days a week.

Mr. Guillian provided the Commission with a PowerPoint presentation of their current operations.

Mr. Guillian stated that on average SEMCO picks up 12-20 loads per week in the winter verses the summer from the West County Quarry. He further stated there has been no accidents on State Route C or HWY 32 ever involving their vehicles.

In addition there have been no traffic violations, speeding tickets, etc. on any of the roads that lead to the quarry from HWY 55. Mr. Guillian added that Mr. Ed Robinson, on his initiative, went to MoDot with concerns about the mentioned intersection. As a result of numerous meetings between Mr. Robinson and MoDot, they have agreed to install the flashing yellow lights at the intersection. It is the opinion of SEMCO that the addition of the new quarry site will not significantly impact the volume of traffic. SEMCO currently utilizes the West County Quarry adjacent to the new property and plan to continue to do business with them in the future. Mr. Guillian informed the Commission that their mining methods involve no explosives. SEMCO uses a product called Dexpan, which is an expansion agent, non-explosive, and safer. There is no noise, vibration, flying debris, or dust and it is environmentally friendly. Mr. Guillian further stated the company utilizes a drill head that sucks the dust out, collects, and dumps it. The Dexpan is mixed in a bucket and poured into the predrilled holes. Over a 24-hour period, depending on the weather, you will see a nice clean split of the rock which makes it more attractive to use for landscaping.

Dr. Haddock asked for clarification on the location of Mr. Wolk's property?

Mr. Guillian stated that when notification was sent, SEMCO got their contact information from the County office. At the time, there was no record on file of Mr. Wolk being a property owner. However, the property in question was identified as an easement not owned by Mr. Wolk.

Mr. Ken Moore stated that SEMCO got their landowner information from the assessor's office. It is his opinion that it is the most current map of ownership that exists. He stated that Mr. Wolk's home, which is approximately 300-400 yards back from the road, is not on the tax roll for that piece of property. According to this information it was determined that it was an easement due to the fact the assessor is not taxing that roadway. It is further the opinion of SEMCO that although Mr. Runk may have given Mr. Wolk an easement deed, it does not make Mr. Wolk a landowner, it merely allows Mr. Wolk an interest in a right to the piece of property.

Mr. Ed Robinson, owner of SEMCO, stated he feels that the company has worked with the DNR to meet the necessary criteria to obtain the permit in question. Mr. Robinson asks that the DNR issue the permit timely as they have orders for rock that need to be filled. Mr. Robinson feels that it is more of a competitive issue than a legal issue.

Mr. DiPardo asked Mr. Robinson what he meant by competitive?

Mr. Robinson replied that Mr. Runk and his partner have been together for years and that the company pays very substantial royalties to the landowners for the stone that is removed. Mr. Robinson added that SEMCO was in need of a long-term lease, however, one was not made available to them. Therefore, SEMCO was forced to purchase property next door.

Mr. Herkert stated when West County Quarry started operating, the quarry was a Limited Liability Company at the time and was jointly owned by Mr. Runk and Mr. Schwent whom have been friends for many years. The land upon which the quarry is situated is owned by Ste. Genevieve Farms I, also a Limited Liability Company which at the time was owned by Mr. and Mrs. Runk. Mr. Herkert added that recently Mr. Runk has gifted his interest in West County Quarry, LLC and their interest in Ste. Genevieve Farms I, LLC to Mr. Schwent. Therefore, today Mr. Runk no longer owns interest in the quarry operation or the underlying real estate.

Mr. Corey Robinson from SEMCO stated Mr. Runk's statement of not receiving a letter of certified mail sent to Ste. Genevieve Farms is conflicting to him. He pointed out that Mr. Herkert previously stated that Mr. Runk gifted everything to Ste. Genevieve Farms recently, so in Mr. Robinson's opinion that would mean that if Ste. Genevieve Farms was in receipt of the certified mail then that would mean that Mr. Runk had received the mail.

Mr. Jenkins stated he did not make that connection. He asked Mr. Robinson if he was assuming the individual that actually received the certified letter was the individual whom was given interest in the property by Mr. Runk?

Mr. Corey Robinson stated that was correct.

Mr. Jenkins asked Mr. Robinson how he would know that?

Mr. Robinson explained that the certified letter was sent to the landowner according to how it was on record with the county courthouse. Mr. Robinson added that if any of that information had changed since the time they checked with the county, SEMCO is not aware of it. Mr. Robinson stated that at the time the letter was sent, it was the company's understanding that they were notifying the proper parties according to the county record. If there was a gifting of property as mentioned by Mr. Runk, there was no way for SEMCO to have privilege to that information.

Dr. Haddock stated that the letter to Mr. Runk was dated July 25, 2005. In reference to Mr. Wolk, it is Dr. Haddock's opinion that unless a warranty deed is presented to the Commission he doesn't feel that the Commission can act on the information given. Regarding the issue of the letter being addressed wrong, Dr. Haddock feels that the letter was sent in good faith and satisfied in that area. He added that the company expressed diligence in fact going to the assessor's office.

Mr. Ziehmer commented that in addition to Mr. Wolk stating that he was not notified, he provided his comments in the letter stating that he joins in the objections and further requested a hearing. Mr. Ziehmer feels that Mr. Wolk provided his comments at that time.

Mr. DiPardo asked how the Commission is to determine if Mr. Wolk is a legitimate landowner?

Mr. Jenkins stated that at some point the Commission needs to determine if that is sufficient. It is Mr. Jenkins opinion that if the company examined the public records at the courthouse, he would not know of what else they could do.

Mr. Zeaman stated contiguous means actual touching of a property line. The DNR has had direction that if there is not an actual touching of the mine plan boundary to the actual county road easement. Mr. Zeaman indicated that we need clear direction on whether the mine plan boundary is adjacent according to the guidelines that must be followed. It is clear to Mr. Zeaman that the Mr. Wolk's property does not contact the property line. The DNR has made a determination that Michael Wolk's property is not considered adjacent or contiguous.

Mr. Coen stated that he had one procedural concern, that being the letter that went to the wrong address. We know that Mr. Runk received the letter and that Mr. Runk is present. However, it did in fact go to the wrong address and Mr. Coen is concerned about saying that is good enough notification because there may come a time in another situation where someone will ask why it was good enough in this situation but not good enough in their case. Mr. Coen's opinion is that the Commission needs to be concerned about holding to the written standard.

Mr. Robinson stated that under circumstantial evidence, in this situation, even though Mr. Runk did not get the notice at that point and time, immediately following, Mr. Runk placed an article in the paper trying to form opposition to what was going on. It is Mr. Robinson's opinion that Mr. Runk was aware and he did nothing.

Mr. Ken Moore stated that this case is different in this situation. The address the letter was delivered to is the address that is on file in the county courthouse for Ste. Genevieve Farms. Mr. Moore added that the letter was delivered to the owner's registered address. Whether Mr. Runk was staying there at the time is unknown. Mr. Moore feels that there was nothing more that the company could have done at this time.

Mr. Runk stated that his address is 8512 State Route C.

Mr. Galbraith stated that we have a statement from Mr. Moore that what is on record with the county for Mr. Runk is 8510 State Route C.

Mr. Runk stated that is the address of R&S Farms.

Mr. Haddock asked if they had been getting the tax bills from the collector's office then?

Mr. Runk stated that he pays his taxes and he does not know what is on the bill by memory as to whether the address is listed as 8510 or 8512. However, his address

in the file as far as he knows is 8512. Mr. Runk stated that he also went to the county assessor's office and was told that Mr. Wolk did own the road in question.

It was asked who R & S Farms is?

Mr. Runk stated R & S Farms is a partnership between John Runk and Welton Schwent. However, R & S Farms is not adjacent to the property where SEMCO is permitting and Mr. Runk stated he did not sign for the certified letter. The letter was signed by his partner Welton Schwent who gave the letter to Mr. Runk when he returned from out of the country. On June 6, 2005, he reported this to Mr. Zeaman and notified him that Mr. Wolk had not received notification.

Mr. Galbraith made the motion to table the issue of request for a hearing until such time it can be determined if the notification was handled in a manner above scrutiny or question. There was no second to Mr. Galbraith's motion. Motion dies.

Mr. Haddock stated that in his opinion if the issue of Mr. Wolk's property was really of a concern then a quick-claim warranty or general warranty deed could have been presented before the Commission if there is sufficient evidence.

Dr. Haddock made the motion to deny a hearing request to move forward with the process. Mr. Ziehmer seconded; motion carries 6-1 with Mr. Galbraith opposing.

#### 4. ENFORCEMENT

**Trager Limestone, LLC – Formal Complaint for Failure to Pay Two Administrative Penalties** Mr. Cabanas presented a request to the Commission to issue a Formal Complaint to Trager Limestone, LLC for failure to pay administrative penalties associated with two separate Notices of Violation. On January 12, 2005, the Staff Director issued an assessment of civil penalties and order to pay for NOV 623-001 and 623-002 in the amount of \$1,000.00 each. Mr. Michael Trager received the documents on January 20, 2005, and also reminded by a letter dated March 21, 2005 of the need to pay these penalties as well as verbally via telephone on June 15 and July 7, 2005. On July 18, 2005 Mr. Trager contacted the Staff Director and requested some assistance in establishing a pay plan for the penalty amounts. In effort to work with the operator, on July 19, 2005, the Staff Director reassessed NOV 623-002 from \$1,000.00 to \$820.00 and set up a payment plan for Mr. Trager to pay \$500.00 per month until the penalties are paid in full. Mr. Cabanas stated that the first penalty payment had been mailed, however, was received within the wrong Program within the Department. In effort to ensure that Mr. Trager sticks to the agreed payment plan, Mr. Cabanas recommended to the Commission that they sign the order and notice associated with a Formal Complaint on the condition that the operator continued payment of \$500.00 per month until the entire penalty is paid in full. Mr. Cabanas added that the LRP further recommends that the Commission suspend



issuance of the Formal Complaint upon the completion of payment of all the penalties associated with NOV 623-001 and 623-002.

Dr. Haddock made the motion to sign the Formal Complaint for failure to pay the administrative penalties associated with the NOVs. Mr. Galbraith seconded; motion carries unanimously.

**J.M. Burger, Inc. – Reinstatement of Permit** Mr. Richard AuBuchon, Assistant Attorney General to the State of Missouri stated at this point and time he is presenting a matter for the staff in regard to J.M. Burger, Inc. Mr. AuBuchon does not represent J.M. Burger, therefore, Mr. AuBuchon asked that his comments are not taken as such. Mr. AuBuchon stated that J.M. Burger is an open pit mining operation in Scott City, Missouri. In January 2004, the Commission revoked the permit of J.M. Burger pursuant to a hearing that Mr. AuBuchon conducted at the request of the company after the Commission issued a Formal Complaint for failure to maintain an adequate bond. Mr. AuBuchon stated at this time before the Commission is a request by staff to reinstate the permit pursuant to 10 CSR 40-10.0705(a)(3)(5)(c). At this time, to Mr. AuBuchon's knowledge, J.M. Burger, Inc. has complied with all requirements by submitting their bonding instrument, which is a Certificate of Deposit for the proper amount. Furthermore, J.M. Burger, Inc. has paid in full their administrative penalty that was brought forth in January 2004, resulting in the revocation. In addition, J.M. Burger has made good on all back fees for 2004 and their current fees for 2005. At this time we ask the Commission to reinstate the permit.

Ms. Garstang made the motion to reinstate the permit. Dr. Haddock seconded; motion carried unanimously.

## 5. BOND RELEASES

### **Industrial Minerals:**

<b>Company</b>	<b>Permit #</b>	<b>Mine</b>	<b>Land Use</b>	<b>Acres Released</b>	<b>Amount Released</b>
Hilty Quarries, Inc.	0119	Urich Quarry	Pasture/ Water/Wildlife	8 3/3	\$ 7,000.00
Hilty Quarries, Inc.	0119	Warrensburg Quarry	Pasture/ Water	44/3	\$23,500.00
Interlochen Corporation dba Sikeston Sand Company	0150	Sikeston Pit #1	Wildlife/ Water	20	\$14,000.00
S & G Sand and Gravel, Inc.	0535	Site #1	Water	9.3	None, bond applied to unbonded areas.
River Cement Company	0043	Hendon Site	Unmined	4	\$2,000.00
River Cement Company	0043	Daniel Bohl Site	Water Impoundment	2	\$1,000.00
River Cement Company	0043	Delmar Limberg	Water Impoundment	3	\$1,500.00
River Cement Company	0043	Dickens Site	Water Impoundment	2	\$1,000.00
River Cement Company	0043	Pinnell Site	Water Impoundment	1	\$500.00
River Cement Company	0043	Rousset Site	Pasture/ Water	2/2	\$2,000.00
River Cement Company	0043	Schanning Site	Water Impoundment	1	\$500.00

Winter Brothers Materials Company	0010	Allen Road Site	Water	10	\$5000.00 bond retained for future amendment.
Fred Weber, Inc.	0062	Winfield Site	Residential Area Water Impoundment	3 5	\$4,000.00
Delta Asphalt, Inc.	0312	Morehouse Sand Pit	Water Impoundment	5	\$2,500.00
Glen-Gery Corporation	0545	Paris Clay Pit	Wildlife Water	3 2	\$2,000.00, Company currently over-bonded by \$500.00 due to large CD
Parkville Stone Co.	0484	Park College Site	Industrial	17	\$12,500.00
Hunt Midwest Mining		Roanoke Quarry	Agriculture Wildlife/ Water	101 29/15	\$72,500.00
Fischer Materials Co., Inc.	0490	Site #1	Unaffected	2	\$ 1,000.00
Chiles Works, LLC	0780	Farmer Site	Water Impoundment	1	\$500.00 bond retained for future permit actions

### **Coal:**

The Office of Surface Mining processed the bond release request for Associated Electric Cooperative on behalf of the State of Missouri and recommends approval of the bond release requests.

### **Associated Electric Coop., Inc.**

**Prairie Hill Mine, Permit 1982-15, Release, PP-05-03:** A field inspection on June 22, 2005, determined the proposed bond liability release areas met all requirements of the Missouri Land Reclamation Program and a recommendation was made to release the requested lands. This application included Phase II & III for 9 acres with a bond liability of \$4,500.00 and Phase III for 3 acres with a bond liability of \$1,500.00

Dr. Haddock made the motion that the Commission follow the recommendation of the Office of Surface Mining and allow the bonds to be released for Associated Electric for bond release application PP-05-03. Mr. DiPardo seconded; motion carried unanimously.

### **Coal Bond Forfeiture Liability Release:**

**North American Resources, Foster Mine:** Mr. Cabanas stated this is a complete liability release for the North American Resources, Foster Mine which was permitted under permit 1994-01 in 1998. Frontier Insurance Company went under receivership following the revocation of the permit and the State of New York took over the operations. The major reclamation work at this site was completed in 2002. Mr. Cabanas added that the Commission did approve a Phase I release for this site on January 22, 2004, for 214 acres which is equivalent to a monetary release of \$464,250.00. The Surety was notified of this release and

informed that the monetary amount specified had been waived from collection. Since that time the State of New York has informed the Program that they do not intend to proceed with any further reclamation. While the State of New York has not submitted a request for release, the LRP is requesting approval to release reclamation liability in an effort to return the site to the original landowners and to prevent any further reclamation liability costs from being incurred by the Program.

Mr. Galbraith made the motion to release all the remaining liability on all the remaining 214 acres of North American Resources, Inc., Foster Mine under permit 1994-01 and to waive collection of money. Ms. Garstang seconded; motion carried unanimously.

**Yates Energy & Development Co:** Mr. Cabanas stated this is a partial liability release for two permits at the Yates Energy Development Co. West pit permits 1982-31 and 1984-01. Mr. Cabanas added the total amount for this project is \$2,027,499.87, which is the total amount spent on the East Pit as well as the West Pit. Since both pits were bid out as one project, there is no break down by it available. The amount of bond collected from the forfeiture of all permits for this company totaled \$342,500.00. The expended balance of \$1,684,949.87 came from the Coal Mined Land Reclamation Fund. Mr. Cabanas stated that it is the recommendation of the staff as all necessary reclamation has been accomplished that the Missouri Land Reclamation Commission release the liability on 193 acres of land permitted by Yates Energy & Development, Inc. at the West Pit.

Mr. Galbraith made the motion to accept the staff recommendation to release the liability on 193 acres of land permitted by Yates Energy & Development, Inc. as detailed in the staff briefing materials. Mr. DiPardo seconded; motion carried unanimously.

## 6. OTHER

### **Legislative Update: HB824**

- HB 824 intends to separate commercial development projects from commercial mining projects.
- The purpose of commercial mining is to extract minerals for recovery and sale. The purpose of commercial development is to excavate land for the development of commercial buildings.
- Neither the Land Reclamation Commission nor the Department of Natural Resources intend for commercial developers to obtain mining licenses to prepare a site for a building development.

- The Land Reclamation Commission voted a policy on this topic in 1995 specifically because we did not want to impose mining regulations on the construction industry.
- In 2003 the staff of the Land Reclamation Commission received complaints on three different occasions for three different situations presented to us as “mining without a permit”. These were in Independence, just south of the Lake of the Ozarks and near Branson. When an excavation for a large commercial development is underway, it easily looks just like a mine site. There is a lot of excavation of soil and rock, there are stockpiles of these materials, there are large pieces of excavation equipment, and trucks are coming and going often from the site.
- Upon investigation of these three complaints, all were determined to be commercial development sites. Our office worked with each of these companies to formally obtain exemptions from mining permits, and the projects went forward successfully. There were delays on only one of these sites, basically because the developer had no local bonding or city permits for the site. Once these were obtained, our exemption was issued.
- These three situations came to the attention of the industry associations since there are many such projects ongoing at any time in Missouri. The industry realizes that when a complaint for mining without a permit is filed with our office we are obligated to pursue the complaint and resolve it. However this can be time consuming for the industry, for our agency and for the owner of the development project.
- This legislation will help clarify the boundaries of those projects designed for commercial development, as opposed to those projects designed to extract minerals commercially. Developers will still be subject to the regulation and inspection associated with the construction industry, but they do not need to be regulated as a mine site.

**Order of Rulemaking for Administrative Hearings:** Mr. Coen stated the Land Reclamation Program has been working on rules to setup administrative hearing procedures. A workgroup was comprised of all Commission Chairman including several members of the public and industry and the attorneys involved wrote the rules and the staff provided the Commission with the Land Reclamation Commission version of the rules. Mr. Coen added that each Commission would need to adopt their own version. The proposal was complete this spring and the LRP is ready to proceed with the Order of Rulemaking. Mr. Coen did receive comments from the Limestone Producer’s Association, which involved very minor cleanup issues. Mr. Coen stated that if the legislation does not change substantially what the Land Reclamation Program is trying to accomplish by rule, then the Program may move forward. Until such time, the process is on hold.

**Update on Program Organization and Working with OSM on the Coal**

**Program:** Mr. Coen stated in the summer of 2003 the legislature had taken a number of staff positions and all general revenue from the Land Reclamation Program, which caused the Program to be in default of the Federal Grant, therefore we lost such Grant. For the past two years the Office of Surface Mining has been running the Missouri Coal Program. This spring, Mr. DiPardo signed letters to the Department Director and State Legislators suggesting solutions to the funding problem. In doing such, the Program obtained the approval from the Department Director and the Governor of the State of Missouri to move forward with the plan to reinstate the coal program. The plan calls for the Program to use the interest only from the forfeited bonds to provide the match that the Program needs to qualify for the Federal Grant. Mr. Coen added that there is currently enough money in the account to fund the coal program for approximately three years. Eventually those funds will be depleted and the Program will require another source of funds to continue. In order to become a fully delegated Program, the staff must comply with a six-month reinstatement process with the Office of Surface Mining. Mr. Coen stated that on July 1, 2005, the Program did receive approximately \$750,000.00 in federal funds that will see the Program through the reinstatement process. Assuming the Program completes the six-month reinstatement process successfully, the Program will get the remaining balance of the Federal Fund.

Mr. Coen presented the Commission with a new organizational chart for the Land Reclamation Program. Mr. Coen stated that with the reorganization, Mr. Larsen and Mr. Bishop will be jointly responsible for the coal program. Mr. Bishop has a history with Abandoned Mine Lands, and Mr. Larsen has a history with the regulatory side of things. In addition, Mr. Cabanas will be supervising the Industrial Mineral/Metallic Mineral Unit. Mr. Coen stated that there is currently a total of 22 FTEs within the Land Reclamation Program, which includes 4 vacancies. The vacancy within the Industrial Minerals Unit will be filled immediately and as the workload increases, the Program intends to fill the remaining vacancies related to coal. Mr. Coen added that one of the current vacancies within the coal units is for a Geologist. The Program plans to work with GSRAD to utilize one of their Geologists rather than hiring one. Mr. Coen has met with the three active coal companies and has committed to each of them that the Program will deliver the same program that they are currently involved with through the Office of Surface Mining. The companies appear to be accepting to the upcoming changes.

**Training Day for Commissioners:** The Department of Natural Resources is in the process of setting up a training day for all various commissioners throughout the Department. The date has tentatively been set for October 5, 2005.

**Resolution:** Mr. Coen presented a resolution for Mr. Richard Hall, whom has left the Land Reclamation Program and is currently working with the Air Pollution Control Program within the Department of Natural Resources.

**Comments from the Public**

No comments were presented.

**Closed Session.** Mr. Ziehmer made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on September 22, 2005, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Galbraith seconded; motion carried unanimously.

**Adjournment.** The meeting adjourned at 12:55 p.m.

Respectfully submitted,

---

Chairman